

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

<b>MARCELA ROMERO,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>14 CH 8920</b>
	)	
<b>CITY OF CHICAGO, et al.,</b>	)	
	)	
<b>Respondents.</b>	)	

**MEMORANDUM AND ORDER**

Petitioner Marcela Romero has filed a Petition for Administrative Review. The parties have filed briefs in support of, and in opposition to, the Petition.

**I. Background**

Petitioner Marcela Romero was employed by the City of Chicago Police Department ("the Department") as a Police Officer. On August 1, 2013, the Superintendent of the Department filed charges with the Police Board of the City of Chicago ("Board") seeking Romero's discharge. (R. 3-7). The Superintendent alleged that Romero had violated Rule 2 (conduct impeding Department's efforts to achieve policy and goals or bringing discredit on the Department), Rule 8 (disrespect or maltreatment of any person, while on or off duty), Rule 9 (engaging in an unjustified verbal or physical altercation with any person, while on or off duty, and Rule 14 (making a false report, oral or written) of Article V of the Rules and Regulations of the Department. (*Id.*).

The charges were based on two separate incidents. The first incident occurred on January 1, 2009. The second incident occurred on October 21, 2009. The investigation by the Independent Police Review Authority ("IPRA") began in January 2009. the Department requested extensions on a regular basis, and the investigation ended in July 2012. Romero was interviewed as part of the investigation in April of 2011.

Following a review of the investigation at several levels, the charges were filed against Romero. A hearing was held before Hearing Officer Thomas E. Johnson on February 13 and 14, 2014. Following the hearing, Johnson made an oral report to the Board.

On April 17, 2014, the Board issued its Findings and Decision finding that cause existed for discharging Romero. The Board first addressed a motion to dismiss the charges filed by Romero based on violation of due process and *laches*.

In her motion to dismiss, Romero had argued that: (1) the Department's failure to bring timely charges violated her due process rights; (2) the charges should be barred by *laches*; (3) the

IPRA investigation failed to follow Department General Orders; and (4) the IPRA investigation violated §2-57-070 of the Chicago Municipal Code. The Board denied the motion finding that: (1) Romero's due process rights were not implicated during the investigation as she had not been suspended without pay until after the investigation was complete and charges were filed; (2) *laches* did not apply because Romero had failed to show the existence of the extraordinary circumstances necessary for *laches* to apply to a public entity and had not established the existence of prejudice; (3) there was no substantial violation of the General Orders and, even if there had been, the General Orders did not require dismissal for such a violation; and (4) even if the IPRA investigation failed to provide all the required notifications under §2-57-070, nothing in that section requires dismissal of charges for such failure.

The Board then made findings as to each of the charges against Romero. Counts I through V of the charges were all based on Romero's conduct on January 1, 2009. Count I alleged that on January 1, 2009, Romero bit Sergeant McHugh on or about the leg and/or told Sergeant McHugh to "Get the fuck out," or words to that effect. Count II alleged that on January 1, 2009, Romero kicked Officer Altwasser on the leg. Count III alleged that on January 1, 2009, Romero kicked Paramedic McLaughlin on his arm. Count IV alleged that on January 1, 2009, Romero spat on Paramedic Allen. Count V alleged that on January 1, 2009, Romero told Officer Cotter to "Get the fuck out of here," or words to that effect. Counts I through V all alleged that Romero's actions violated Rules 2, 8 and 9 of the Department's Rules and Regulations.

The Board found that the credible testimony of Officer Nellum, Officer Cotter and Officer Altwasser established that: (1) Romero told Officer Nellum that she was feeling suicidal; (2) that Officer Cotter, Officer Altwasser and Sergeant McHugh went to Romero's home for a wellness check; (3) that Romero swore at them telling them to leave; (4) that after being told she needed to cooperate or be handcuffed, Romero continued to resist; (5) that Romero's fellow officers were genuinely concerned about Romero's well-being and justified in handcuffing her in an attempt to control the situation; (6) that Romero bit Sergeant McHugh after being handcuffed, kicked Officer Altwasser, and later spit on and kicked the paramedics responding to the scene. The Board found there was no reason for Romero to have responded to her fellow officers in this fashion. The Board found that Romero was guilty of violating Rules 2, 8 and 9 in the manner alleged in Counts I, II, III, IV and V of the charges.

Count VI alleged that on October 21, 2009, at the district police station, Romero struck and/or head-butted Officer Nellum in the face, placed her hand on her weapon, and stated to Officer Nellum, "Bitch, I'm going to fucking kill you," or words to that effect. Count VI alleged that this was a violation of Rules 2, 8 and 9.

The Board found that the credible testimony of Officer Nellum established that Romero hit her in the face, head-butted her and further threatened her. Officer Nellum's testimony was corroborated by Officer Cifuentes who was in the next locker row over and heard Officer Nellum call for a 10-1 (officer needs assistance). The Board found Romero's testimony that Officer Nellum attacked Romero to be not credible. The Board further found that Officer Nellum's account was further corroborated by her prompt report of the incident and Officer Romero's failure to promptly report the incident. The Board found Romero guilty of violating Rules 2, 8 and 9.

Count VII of the charges against Romero alleged that on April 19, 2011, Romero made false statements to Investigator Andrew Palahniuk regarding the October 21, 2009 attack on Officer Nellum and Romero's confrontation with Captain Scheithauer, Lieutenant Ortiz, and Sergeant Isakson. The Board found that the credible and consistent testimony of Captain Scheithauer, Lieutenant Ortiz and Sergeant Isakson, as well as that of Officer Crayton, that Romero, when approached after the attack on Officer Nellum, refused to turn over her gun, refused to speak with them, became agitated and swore at them, supported the charge of Count VII. The Board found that Romero had violated Rules 2 and 14.

## **II. Petition for Administrative Review**

Romero has filed a Petition for Administrative Review seeking reversal of her discharge. On administrative review, the standard of review applied by the trial court depends upon the issue presented. Questions of law are reviewed *de novo*. Knight v. Village of Bartlett, 338 Ill. App. 3d 892 (1<sup>st</sup> Dist. 2003). Mixed questions of law and fact are subject to the "clearly erroneous" standard of review. Marconi v. Chicago Heights Police Pension Board, 361 Ill. App. 3d 1, 16 (1<sup>st</sup> Dist. 2005). Questions of fact are subject to the "manifest weight of the evidence" standard of review. O'Boyle v. Personnel Board of Chicago, 119 Ill. App. 3d 648, 653 (1<sup>st</sup> Dist. 1983).

### ***A. Due Process***

Romero contends that the Board erred in denying her motion to dismiss based on violation of her due process rights. This issue is a question of law to reviewed *de novo* by this court. Chisem v. McCarthy, 2014 IL App (1st) 132389, ¶14.

In Chisem v. McCarthy, 2014 IL App (1st) 132389, the appellate court considered whether the due process rights of the plaintiff, a police officer discharged by the Board, had been violated. The plaintiff argued that the Department's failure to file timely charges violated his due process rights. *Id.* at ¶14. The court found that there was no violation of due process rights because the plaintiff worked as a paid police officer during the course of the investigation on the charges and was not suspended without pay. *Id.* at ¶15. In addition, the plaintiff was given notice of the pending investigation and had a meaningful opportunity to be heard. *Id.*

Like the plaintiff in Chisem, Romero continued to work as a paid police officer during the course of the investigation and was not suspended without pay. The Chisem court rejected reliance on Morgan v. Department of Financial and Professional Regulation, 374 Ill. App. 3d 275 (1<sup>st</sup> Dist. 2007), and Lyon v. Department of Children and Family Services, 209 Ill. 2d 264 (2004), cited by Romero here, because in those cases, the plaintiffs were suspended without pay prior to a delay in investigating. Chisem, 2014 IL App (1<sup>st</sup>) 132389, ¶15. Furthermore, like the plaintiff in Chisem, Romero had notice of the investigation and was given a meaningful opportunity to be heard. *Id.*

Romero's due process rights were not violated.

## **B. Laches**

Romero also contends that the charges against her were barred by the doctrine of *laches*. This same argument was made, and rejected, in Chisem. As stated by the Chisem court, “the doctrine of *laches* does not apply to governmental entities absent extraordinary circumstances because *laches* could impair the functioning of the government, which, in turn, would adversely affect the public.” Id. at ¶18. The record before the court is devoid of any extraordinary circumstances which would support the application of *laches*. Therefore, the Board did not abuse its discretion in finding that *laches* did not apply. Id. at ¶19.

## **C. Failure to Comply with the Municipal Code and General Order**

Romero next argues that the Board erred in finding that the Department did not comply with §2-57-070 of the Chicago Municipal Code or Department General Order 93-03. Once again, these same arguments were made, and rejected, in Chisem. The Chisem court found that neither §2-57-070 nor General Order 93-03 provided for absolute deadlines for investigations or provided any automatic sanction of dismissal. Id. at ¶¶16-17.

## **D. The Propriety of Discharge**

Romero argues that the Board’s findings were against the manifest weight of the evidence and that her discharge was arbitrary, capricious and unrelated to the needs of service. A court in reviewing an agency’s decision to discharge an employee must make a two-step analysis. Austin v. Civil Svc. Comm’n, 247 Ill. App. 3d 399, 403 (1<sup>st</sup> Dist. 1993). A court must first decide if the agency’s findings of fact are contrary to the manifest weight of the evidence. Id. Then the court determines whether the findings of fact, which are considered *prima facie* true and correct, provide sufficient basis for the agency’s determination that there is cause for discharge. Id. The determination of whether cause to discharge exists may be reversed if the decision is arbitrary, unreasonable, or unrelated to the requirements of service. Bell v. Civil Service Commission, 161 Ill. App. 3d 644, 648 (1<sup>st</sup> Dist. 1987).

Discharge is proper if an employee’s conduct constitutes a “substantial shortcoming that renders the employee’s continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as good cause for his no longer holding the position.” Sangiardi v. Village of Stickney, 342 Ill. App. 3d 1, 17-18 (1<sup>st</sup> Dist. 2003); Sindermann v. Civil Service Comm’n, 275 Ill. App. 3d 917, 928 (2d Dist. 1995).

“[B]ecause the weight of the evidence and the credibility of the witnesses are within the province of the [agency], there need only be some competent evidence in the record to support its findings.” Trettenero v. Police Pension Fund of the City of Aurora, 333 Ill. App. 3d 792, 802 (2d Dist. 2002)(citation omitted). “[A] reviewing court may not re-evaluate the credibility of witnesses or resolve conflicting evidence.” Alden Nursing Center-Morrow, Inc. v. Lumpkin, 259 Ill. App. 3d 1027, 1033 (1<sup>st</sup> Dist. 1994). “If the issue before the reviewing court is merely

one of conflicting testimony and credibility of witnesses, the administrative board's decision should be sustained." O'Boyle, 119 Ill. App. 3d at 653.

The Board's findings are supported by competent evidence in the Record. It is not the province of this court to resolve conflicts in the evidence or judge the credibility of the witnesses. Therefore, the Board's findings are not against the manifest weight of the evidence.

Furthermore, it is abundantly clear that the Board's decision to discharge Romero from her employment was not arbitrary, capricious or unrelated to the needs of service. Romero was found to have attacked her fellow officers and others. She was further found to have lied about her conduct in the course of the investigation. Sound public opinion would recognize this as good cause for Romero's discharge.

Romero further argues that the Board did not consider mitigating factors. The Board, however, expressly stated that it considered such factors, but found they did not overcome the seriousness of Romero's conduct. The Board's decision was not unreasonable.

### **III. Conclusion**

The Board's Decision of April 17, 2014 is affirmed. The status date of March 13, 2015 is stricken.

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Judge Neil H. Cohen

